

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff(s),)
)
)
vs.) Case No. 4:07CR175 JCH (DDN)
)
MICHAEL SHANAHAN, SR.,)
MICHAEL SHANAHAN, JR., and)
GARY C. GERHARDT,)
)
Defendant(s).)

ORDER

This matter is before the Court on Defendants' pre-trial Motions to Dismiss the Original and Superseding Indictments. Pursuant to 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge David D. Noce, who filed a Report and Recommendation on April 17, 2008. (Doc. No. 186). In his Report and Recommendation, Magistrate Judge Noce recommends that Defendants' motions be denied. After de novo review of the entire record in this matter, this Court adopts the Magistrate Judge's recommendation that Defendants' motions be denied.¹

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [Doc. No. 186] is **SUSTAINED, ADOPTED, AND INCORPORATED** herein.

IT IS FURTHER ORDERED that Defendant Gary C. Gerhardt's Motion to Dismiss the Indictment--Evidence Presented to the Grand Jury [Doc. No. 38] is **DENIED**.

¹ In their objections to the Magistrate Judge's Report and Recommendation, Defendants request that this Court defer consideration of the proper definition of "backdating" (fraudulent, innocent, or otherwise), until the settling of jury instructions or other context in which the issue can be fully briefed. (Doc. No. 197, P. 7). Upon consideration, the Court will grant this request.

IT IS FURTHER ORDERED that Defendant Gary C. Gerhardt's Motion to Dismiss the Indictment because of Fundamental Ambiguity in the Underlying Accounting Pronouncements [Doc. No. 39] is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss the Superseding Indictment because of Fundamental Ambiguity in the Underlying Accounting Pronouncements [Doc. No. 106] is **DENIED**.

Dated this 28th day of May, 2008.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE